

## NOTICE OF PROPOSED RULEMAKING

### TITLE 23. WATERS DIVISION 3. RESOURCES CONTROL BOARD CHAPTER 16. UNDERGROUND STORAGE TANK REGULATIONS ARTICLE 3. NEW UNDERGROUND STORAGE TANK DESIGN, CONSTRUCTION AND MONITORING REQUIREMENTS

*NOTICE IS HEREBY GIVEN* that the State Water Resources Control Board (State Water Board) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

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### PROPOSED REGULATORY ACTION

The State Water Board proposes to add section 2631.2 to Article 3 (commencing with section 2630), chapter 16, division 3, title 23 of the California Code of Regulations, which would provide a variance from specific independent testing and approval requirements for underground storage tank (UST) systems storing certain biodiesel blends.

### PUBLIC HEARING

A public hearing has not been scheduled for this proposed action. A public hearing will be held if any interested person, or duly authorized representative of an interested person, submits a written request for a public hearing to the State Water Board no later than 15 days before the close of the written comment period. If a request for a public hearing is made, the State Water Board shall provide notice of the time, date and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

### WRITTEN COMMENT PERIOD

The State Water Board requests comments from interested persons to present any statements, arguments, or contentions relating to the proposed regulation. The comments must be submitted in writing and received by the State Water Board before the close of the written comment period in order to be considered by the State Water Board before it adopts the proposed regulation. **The written**

**comment period begins August 14, 2009, and closes at 5:00 p.m., Pacific Daylight Time, on Monday, September 28, 2009.**

Comments may be hand delivered, or submitted by U.S. mail, facsimile transmission, or electronic mail. Comments delivered by hand should be taken to 1001 I Street, Sacramento, California, and addressed to the attention of Ms. Laura Fisher, Division of Water Quality, 15<sup>th</sup> Floor, State Water Resources Control Board. Comments submitted by U.S. mail should be addressed as follows:

Ms. Laura Fisher  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 2231  
Sacramento, CA 95812  
(916) 341-5870  
E-mail address: [lfisher@waterboards.ca.gov](mailto:lfisher@waterboards.ca.gov)

Comments sent by facsimile should be sent to the following facsimile phone number: (916) 341-5808. Comments submitted by electronic mail should be sent to the following e-mail address: [lfisher@waterboards.ca.gov](mailto:lfisher@waterboards.ca.gov).

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, please notify Laura Fisher at the mailing address or e-mail address indicated above. Also, you may subscribe on the internet at [http://www.waterboards.ca.gov/resources/email\\_subscriptions/UST\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/UST_subscribe.shtml). On the Underground Storage Tanks Program – Email List Subscription Form, select the category entitled “Program Requirements and Guidance.”

**Persons who receive this notice by mail or electronic mail are already on the mailing list.**

## **AUTHORITY AND REFERENCE**

Health and Safety Code section 25299.3 authorizes the State Water Board to adopt regulations to implement Chapter 6.7 of the Health and Safety Code. Reference sections are Health and Safety Code sections 25281, 25286, 25290.1, 25290.2, 25291, and 25404.1.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Summary of Existing Laws and Regulations and Effect of Proposed Action.  
Chapter 6.7 of the Health and Safety Code requires that the primary containment

of a UST be compatible with the stored substance, and that the secondary containment be constructed to prevent structural weakening as a result of contact with any released substance. State Water Board promulgated regulations require that: a) A UST be approved by an independent testing organization; b) An owner or operator of a UST use system components made of, or lined with, materials that are compatible with the hazardous substances stored in the UST, c) The components approved for the installation of a UST system, on and after July 1, 2004, include a list of compatible products tested and the measured permeation rate of those products; and d) The leak detection equipment be tested by an independent testing laboratory and be approved to function with the substance stored.

Biodiesel is a renewable fuel that can be manufactured from new and used vegetable oils, animal fat, and recycled restaurant grease. Biodiesel can be blended and used in many different concentrations, which include B100 (pure biodiesel), B20 (20% biodiesel, 80% petroleum diesel), B5 (5% biodiesel, 95% petroleum diesel).

With the exception of biodiesel blends up to B5, USTs manufactured to date and in use in California have not received independent testing organization approvals for pure biodiesel or other biodiesel blends as required under the State Water Board regulations. The estimated time period to obtain independent testing organization approval is two years from when the UST manufacturer submits the product to the testing organization. Leak detection method approvals have not been obtained for pure biodiesel or any blend of biodiesel. The estimated time period for obtaining approval of a leak detection method is 12 months from when the material is submitted. The effect of the proposed regulation is to allow for the storage of biodiesel blends up to and including B20 in UST systems that have been approved for storing petroleum diesel if other specified criteria are satisfied.

The proposed action does not differ substantially from existing comparable federal law.

Policy Statement and Objectives. The State of California and the United States Environmental Protection Agency have found that greenhouse gas (GHG) emissions pose a threat to human health and welfare. Using alternative fuels, including biodiesel blends, assists with the reduction of GHG emissions. Testing and approval of USTs has not kept up with the introduction of and desire to use biodiesel blends in California. The overall objective of this regulation is to facilitate the use of biodiesel blends in California to combat GHG emissions. The specific objective is to provide a variance from third-party testing and approval requirements so that biodiesel blends up to B20 can be stored in UST systems in a manner that does not create any significant risk of adverse impacts to water quality.

### **Mandate on Local Agencies or School Districts**

The State Water Board has determined that the proposed regulation does not impose a mandate on local agencies or school districts.

### **Fiscal Impact Estimates**

State Agencies: The State Water Board has determined that the regulation will involve no additional costs or savings to any state agency.

Reimbursable Cost to Local Agencies or School Districts: The State Water Board has determined that the proposed regulations will not result in any additional cost or savings to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code.

Other Non-discretionary Cost or Savings Imposed on Local Agencies: The State Water Board has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulation.

Cost or Savings in Federal Funding to the State: The State Water Board has determined that there is no cost or savings in federal funding to the state as a result of the proposed regulation.

## **ECONOMIC IMPACT STATEMENTS**

Statement of Significant Statewide Adverse Economic Impact Directly Affecting Business: The State Water Board has made the initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The variance established by this regulation is optional. During the emergency rulemaking process, the State Water Board received testimony and comments indicating that failing to authorize this variance would have a significant adverse economic impact on business.

The California Biodiesel Alliance stated that the inability to lawfully store biodiesel in California USTs is "creating real harm to California's nascent biodiesel industry, federally regulated fleets and the environment. Urgent action is required to address these harmful impacts to California's general welfare. Without urgent action, a large portion of California's biodiesel industry will fail, with the loss of a significant number of jobs and setting California environmental policy back years." (Letter from California Biodiesel Alliance dated April 30, 2009.)

The California Biodiesel Alliance also stated that there are over ten biodiesel plants in California either currently producing biodiesel or nearing their start-up

phase. These plants reported that they had lost a significant amount of business due to their customer's inability to store biodiesel blends in USTs in California. Without adoption of the emergency regulations, many, if not most, of these plants will almost certainly go out of business and over 100 jobs would be lost. (Letter from California Biodiesel Alliance dated May 29, 2009.)

Cost Impacts on Representative Private Persons Or Businesses: The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

Effect on Creation Or Elimination of Jobs within California: The State Water Board has determined that the proposed regulation will not adversely affect the creation of jobs or that it will eliminate jobs within California.

Effect On Creation of New Businesses or Elimination of Existing Businesses within California: The State Water Board has determined that the proposed regulation will not adversely affect the creation of new business or that it will eliminate existing business in California.

Effect On Expansion of Businesses Currently Doing Business within California: The State Water Board has determined that the proposed regulation will not adversely affect the expansion of businesses currently doing business within California.

Effect on Small Businesses: The State Water Board has determined that the proposed regulation does not adversely affect small businesses. The variance established by this regulation is optional. During the emergency rulemaking process, the State Water Board received testimony and comments indicating that failing to authorize this variance would have a significant adverse economic impact on business.

Consideration of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), the State Water Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Interested persons may present statements or arguments with respect to alternatives to the proposed regulation during the written comment period or at any hearing in this matter.

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The State Water Board has prepared an Initial Statement of Reasons for the proposed regulation. The Initial Statement of Reasons includes the specific purpose of the regulation proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulations are proposed. The Initial Statement of Reasons, the express terms of the proposed regulation, and all information on which the proposed action is based are available from the agency contact person named in this notice.

The rulemaking file is available for inspection and copying through the rulemaking process at the Division of Water Quality, 1001 I Street, 15<sup>th</sup> floor, Sacramento, California. As of the date that this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulation, the Initial Statement of Reasons, and the rulemaking file for the emergency regulation that became effective on June 1, 2009.

The rulemaking file will also be published and made available at the following State Water Board Internet website:

**<http://www.waterboards.ca.gov/ust/>**

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulation substantially as described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the State Water Board adopts the regulation. A copy of any modified regulation may be obtained by contacting Ms. Laura Fisher, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the State Water Board website previously identified.



## CONTACT PERSONS

Inquires concerning the proposed action may be directed to:

Ms. Laura Fisher  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 2231  
Sacramento, CA 95812  
(916) 341-5870  
E-mail address: [lfisher@waterboards.ca.gov](mailto:lfisher@waterboards.ca.gov)

The backup contact person for these inquiries is:

Ms. Lori Brock  
Office of Chief Counsel  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812  
(916) 341-5185  
E-mail address: [lbrock@waterboards.ca.gov](mailto:lbrock@waterboards.ca.gov)

Questions regarding the substance of the proposed regulations may be directed to either contact person.

Please direct to Ms. Laura Fisher requests for copies of the proposed text (the "express terms") of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or any other information upon which this proposed rulemaking is based.